

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

THOMAS J. CAPANO,

Petitioner,

v.

Civ. Act. No. 06-58-KAJ

THOMAS L. CARROLL,

Warden, and **CARL C. DANBERG,**

Attorney General for the State of Delaware,

Respondents.

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, Thomas J. Capano, has applied for federal habeas relief, challenging his 1999 conviction by a Delaware Superior Court jury for first degree murder. D.I. 1. By the terms of the Court's order of April 12, 2006, the answer is due to be filed on June 5, 2006. D.I. 9.

2. Counsel for respondents have been, and continue to be, diligently working on numerous cases before this Court, the Third Circuit, and the state courts, including other first degree murder cases. However, the departure of three deputies from the Appeals Division has increased the workload for the few remaining attorneys. Two new deputies have accepted positions in the Appeals Division, but one will not be able to begin work until July and the other will begin in August. In light of the situation, additional time is needed to complete the answer.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-

74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' second request for an extension of time in this case.

5. Respondents submit that an extension of time to and including July 28, 2006, in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ Loren C. Meyers
Chief of Appeals Division
Del. Bar. ID No. 2210

/s/ Elizabeth R. McFarlan
Deputy Attorney General
Del. Bar. ID No. 3759

Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500

DATE: June 2, 2006

RULE 7.1.1 CERTIFICATION

I hereby certify that counsel for the petitioner, Joseph M. Bernstein, Esquire, has been contacted and he has no objection to the subject matter of this motion.

/s/ Elizabeth R. McFarlan
Deputy Attorney General

Counsel for Respondents

Date: June 2, 2006

CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2006, I electronically filed a motion for extension of time and attachment with the Clerk of Court using CM/ECF which will send notification of such filing to Joseph M. Bernstein, Esq.

/s/ Elizabeth R. McFarlan
Deputy Attorney General
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ORDER

This ____ day of _____, 2006,

WHEREAS, respondents having requested an extension of time in which to file an answer, and

WHEREAS, it appearing to the Court that the requested extension is timely made and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before July 28, 2006.

United States District Judge